

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 555 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL SHANTILAL SHIVDAS & ANR.

Versus

THACKER GODAVARIBEN & ORS.

Appearance:

MR SURESH M SHAH for Petitioner

MR BHARAT J SHELAT for Respondent No.1, 2, 3/1 to
3/5, 4 and 5

MR YS MANKAD for Respondents Nos. 6/1 to 6/7, 7 & 9

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/09/97

ORAL JUDGEMENT

1. The appellants herein are the original plaintiffs. They have filed Special Civil suit No. 34/1977 for redemption of mortgage and possession of the suit property known as "Vandi" situated behind Jayshree Talkies, Bhuj in Municipal ward No.2 and bearing No. 355-356 consisting of the residential houses therein, on payment of the mortgage money of Rs.733-35 ps. to the respondents nos. 1 to 6.
2. The learned Civil Judge (Senior Division) Bhuj by his judgment and order dated 31/8/1979 dismissed the suit

with cost on the question of limitation only hearing the issue no.8 "Whether the suit is time barred?" as preliminary issue.

3. Having heard the learned advocates appearing for the rival parties and on going through the judgment of the learned trial Judge, I find that even the question of limitation depends upon the question of fact with regard to whether clog on redemption had in fact ensued and if so when. It is thus clear that the issue with regard to limitation also involved mixed question of fact and law. The learned trial Judge ought to have tried the suit and heard the same on evidence on all the issues instead of deciding the issue of limitation as a preliminary issue.

4. In above view of the matter, even though the matter is quite old, there is no alternative except to pass the following order :-

The impugned judgment and order of dismissal of suit is hereby quashed and set aside. The suit is remanded to the trial Court for hearing the same afresh after permitting the parties to adduce evidence on all issues. The suit shall be disposed of in accordance with law as expeditiously as possible, preferably within a period of six months from the date of receipt of writ of this direction. This appeal is accordingly allowed with no order as to cost. R & P, if any, to be immediately sent back.